SUPREME COURT, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 263

LEROY CRUMLEY, alias LEO CRUMLEY;
Petitioner

vs.

STATE OF ALABAMA,
Respondent

PETITION FOR REHEARING

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, LEROY CRUMLEY, alias LEO CRUMLEY, prays that he be granted a rehearing in this cause to review the judgment or order of the Supreme Court of the United States of October 13, 1969, which denied to him a writ of certiorari to be issued out of and under the seal of this Court to review the judgment of the Court of Appeals of Alabama rendered on January 7, 1969, which affirmed the conviction of petitioner by a jury in the Circuit Court, Houston County, Alabama, for the crime of burglary in the second degree and the resulting sentence to the penitentiary for a term of seven years.

Jurisdiction

This petition is submitted pursuant to Rule 58(2), Rules of the Supreme Court of the United States, 1967.

Additional Substantial Question Presented

Whether or not the conviction of petitioner was so totally devoid of evidentiary support as to render it unconstitutional under the due process clause of the Fourteenth Amendment, United States Constitution.

Constitution Provision Involved

That portion of the Fourteenth Amendment, Section 1, which states:

"*** nor shall any State deprive any person of life, liberty, or property, without due process of law; ***"

Additional Statement Of The Case

The facts upon which the Court of Appeals of Alabama (now the Court of Criminal Appeals) relied to sustain the conviction here are set forth at pp. Al, *et seq.*, of the petition for writ of certiorari. Defense counsel at the trial interposed the proper Alabama procedural device to test the sufficieny of this evidence to convict, thusly:

> "MR. SMITH: At this time we make a motion, if your Honor please, to exclude all the evidence and exhibits in this case. We move to exclude all the evidence presented in this case by the State on the grounds that the State has failed to prove its case; they failed to prove the elements of burglary under the law of Alabama, as charged in this case.
>
> "THE COURT: Overrule your motion." (R. 181)

At the time of the submission of the petition for writ of certiorari to this Court, petitioner, LEROY CRUMLEY, was of the considered opinion that the federal constitutional point raised therein was amply sufficient to invoke the granting of certiorari; and, further, that the point was a part and parcel of the additional federal constitutional question now spelled out in this petition for rehearing.

Reasons For Granting Rehearing

A.

THE CONVICTION OF PETITIONER WAS SO TOTALLY DEVOID OF EVIDENTIARY SUPPORT AS TO RENDER IT UNCONSTITUTIONAL UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

In *Garner v. Louisiana,* 368 US 157, then Chief Justice Warren, speaking for this Court, affirmed the proposition that a conviction by a state court totally unsupported by the evidence violates the due process clause of the Fourteenth Amendment. While the climate of *Garner* and *Thompson v. Louisville,* 362 US 199, differ from the factual circumstances present here, nonetheless, the constitutional principle enunciated in those cases should not be restricted.

Alabama in criminal cases does not apply its scintilla of evidence rule utilized in civil cases. See *Livingston v. Alabama,* 44 AlaApp 559, 216 So2d 731.

Livingston reversed a burglary conviction on the basis the evidence failed to establish a prima facie case against the defendant. A comparison of this case with *Livingston* demonstrates conclusively that the State equally failed to meet its burden here.

In Part IV, opinion of the Court of Appeals, pp. A5 and A6, Petition for Certiorari, there are enumerated seven points of difference with the *Wildman* case. A careful rereading of the transcript of the evidence adduced at trial indicates the following differing conclusions to these seven points:

(1). There is no evidence petitioner was ever in the automobile, or that he exercised dominion or control over it.

(2). There is no evidence petitioner stated directly or otherwise, that the Plymouth automobile, or any other named car, was out of gas. This is an immaterial matter.

(3). The fact petitioner wore two pairs of trousers in mid-January is of no probative value.

(4). There is no evidence the boot was the property of petitioner; nor that he had worn it; nor that he had ever had it in his possession and control.

(5). The record is devoid of any connection of petitioner with certain tools left at the scene of the burglaries.

(6). There is no evidence connecting petitioner with the purchase of certain tools, which purchase actually occurred after the date of the charged burglary.

(7). This point has been discussed in the Petition for Writ of Certiorari.

Conclusion

Petition submits that the additional federal constitutional question here presented is of sufficient importance for the Court to grant a rehearing of its denial of the petition for writ of certiorari, and, also, to grant the petition for writ of certiorari.

Respectfully submitted,

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Of counsel for Petitioner

CERTIFICATE

I, FRED BLANTON, JR., of counsel for LEROY CRUMLEY, alias LEO CRUMLEY, petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that the above and foregoing petition for rehearing is presented in good faith and not for delay; and I further certify that the foregoing petition for rehearing is restricted to the grounds specified in the petition.

This the day of November, 1969.

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